



TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

JUNE 1974

RECORD KEEPING REQUIREMENTS

Every person required to file sales and use tax returns must prepare and keep adequate and complete records of his business transactions to enable him, as well as the State, to determine the correct amount of tax for which he is liable. These records must include the books of account ordinarily maintained by a prudent businessman together with all supporting information such as beginning and ending inventories, purchases, sales, cancelled checks, receipts, invoices, bills of lading, and exemption certificates which are the basis for entries in the books of account, and the amounts reported on the tax returns.

In the absence of suitable and adequate records the department may determine the amount of tax due the State by using any information available whether obtained at the taxpayer's place of business or from any other sources. Failure to keep adequate records may be considered willful noncompliance with the sales and use tax law, constituting a misdemeanor.

"DEDUCTIONS" MUST BE PROPERLY ITEMIZED

Failure by a taxpayer to enter each deduction separately on the back of his sales and use tax return can present a distorted picture of the taxpayer's business to persons reviewing the returns. As a result, the deductions claimed to arrive at taxable sales may be disallowed by office audit, resulting in increased sales tax liability. In addition, a field audit of the taxpayer's records may be scheduled. This may be time-consuming for the taxpayer, even though he is able to provide proof that the total deductions claimed were correct.

DOCUMENTATION OF EXEMPT PURCHASES

Exempt sales to the federal and state government, municipalities and public schools need not be supported by exemption certificates. A governmental or school purchase order is the only evidence a supplier needs to substantiate his exempt sales to this type of exempt purchaser.

Sales to organizations holding a Certificate of Exempt Status can be shown to be exempt by recording the exemption certificate number on the seller's copy of the bill of sale. The following types of organizations are examples of those which generally are entitled to hold a

Certificate of Exempt Status: churches, Boy and Girl Scouts, hospitals, nonprofit private schools, American Red Cross, Y.M.C.A.'s and Y.W.C.A.'s, Community Chest Funds, and other similar religious, charitable and educational organizations.

All other exempt sales must be supported by an exemption certificate signed by the purchaser and retained by the seller, which clearly shows the nature of the exemption being claimed.

TIPS AND SERVICE CHARGES ON SALES OF MEALS

A customer's tip which is given directly to a waitress in cash, or which is added by the customer to his bill, which amount is then turned over in full to the restaurant employe, is exempt from the sales tax, if the amount of such tip is wholly in the discretion or judgment of the customer.

However, an amount or flat percentage, whether designated as a tip or as a service charge that is added to the price of meals pursuant to a requirement of the seller furnishing such meal, is a part of the selling price of such meals and is subject to the tax regardless of whether the amount or flat percentage may be subsequently paid over by the seller to his employes.

MOTORING CLUBS

The dues paid to motoring clubs, such as the American Automobile Association and the AMOCO Motor Club, are not subject to the 4% sales tax. However, the amounts paid by motor clubs to service stations or wrecker operators for servicing or towing motor vehicles are taxable to the same extent they would be if the vehicle owner paid for such service.

WHAT IS THE USE TAX?

Every state that has a sales tax has a use tax to complement the sales tax. Without a use tax consumers would be able to purchase goods out-of-state in order to avoid paying tax on their purchases. This would adversely affect the amount of business done by local merchants, and would seriously reduce the amount of revenue from the sales tax.

To prevent the results described above, a use tax is levied

on the use of tangible personal property or taxable services within the state at the same rate as the sales tax. The use tax is ordinarily imposed whenever the consumer purchases goods or taxable services out-of-state without paying a sales tax equivalent to the local rate, and then uses the goods or services back in his home state.

The Wisconsin use tax, which is imposed under Section 77.53 of the Sales and Use Tax Law, is an excise tax upon the storage, use or other consumption of property that is purchased from any retailer for storage or use in this state. Its normal application is to property purchased from out-of-state suppliers for use in Wisconsin. It does not apply when the sale of the property to the purchaser is subjected to the 4% Wisconsin sales tax. The amount of sales tax paid to the other state in which the purchase was made is a credit against the 4% Wisconsin use tax due.

Many large out-of-state companies making sales and shipments into Wisconsin are registered with this department to collect the Wisconsin 4% tax. If they are collecting the Wisconsin tax, it will show as a separate item on the invoice in accordance with the law. If the Wisconsin tax is not billed separately on the invoice issued by the out-of-state seller, the buyer should report the tax directly to this department on line 7 of his Sales and Use Tax Return, or on a Consumer Use Tax Return. In such cases the buyer should not add the tax when paying the invoice.

If taxable property is purchased for resale and a Resale Certificate is issued by the purchaser, the use tax applies if there is any use of the property other than demonstration or display while holding it for resale in the regular course of business. The use tax also applies when the purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempt from the tax, and then the property is used in some other manner or for some other purpose.

MAILING LISTS

All sales of tangible personal property, including mailing lists, are taxable under the Sales and Use Tax Law, except where a specific exemption applies. All the members of the business community may not be fully aware of this, and for that reason a portion of the text of Technical Information Memorandum S-59 is reproduced below:

1. Definition

A "mailing list" as used herein means a written or printed list, series, set, group, aggregation, etc., of addresses, and/or other information concerning persons, which is intended for use in circulating material by mail. Such a list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards, or other similar means of communication.

2. Application of Tax

The tax applies to the gross receipts from the

transfer of title to or possession of mailing lists. This includes the rental of or the granting of a license to use such lists.

Persons engaged in the business of providing mailing lists are deemed the consumers of all tangible personal property used in producing such lists. However, any tangible personal property becoming a component part of actual mailing lists when such mailing lists are physically transferred to the customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives his supplier a properly completed resale certificate.

PURCHASES BY TOURISTS

With the tourist season in full swing we would again like to point out that sales of taxable goods or services to out-of-state tourists are taxable, if delivery is made in Wisconsin. A mere statement that the item purchased is to be removed from this state is not an acceptable reason for making the sale exempt. You, as the retailer, are liable for the 4% tax on the transaction, even if you do not charge tax to the customer.

However, if you ship the goods out-of-state for your customer, before he obtains possession, and can prove that you did so, the Wisconsin sales or use tax does not apply.

PERFORMING FARM CUSTOM WORK

Section 77.54(3) of the Wisconsin Statutes, exempting tractors and machines used directly in farming, was recently amended to allow farmers to use their machines in job contracting without losing the exemption *provided the job contracting is by one farmer for another with machinery customarily used by the performing farmer in his own farming operation.*

Previously the law had provided that when a farmer used his farm machinery more than nominally to perform custom work for other farmers his equipment became subject to the 4% sales and use tax.

BINGO OPERATIONS

The gross receipts from conducting bingo games are subject to the 4% sales tax. These same receipts are also subject to the 2% gross receipts tax that is payable to the Bingo Control Board pursuant to Chapter 156, Laws of 1973. This 2% tax is not part of the base on which the sales tax is imposed. No person conducting bingo operations is exempt as an "occasional seller". The gross receipts from the sales of meals, food products, beer, intoxicating liquors, soft drinks or any other sales of tangible personal property on the premises are also subject to the 4% sales tax.

Sales of bingo supplies to the person conducting bingo operations are taxable except: (a) when the sale is to an

REALTY VERSUS PERSONAL PROPERTY

We have received inquiries from construction contractors and their suppliers asking whether certain items become part of the realty upon installation, or whether such items remain personal property. If an item becomes part of realty upon annexation, the contractor is the consumer, and the 4% tax is imposed on the sale of the property to him. On the other hand, if an item remains personal property a retail sale is involved and the tax is imposed on the contractor's gross receipts, including the installation charges.

It should be noted that annexation to realty is not the only criteria used to determine whether property is "real" or "personal". In a sales tax case, *Mt. LaCrosse v. Wis. Dept. of Revenue*, decided on July 22, 1969, the Dane County Circuit Court said:

"Property is real if it meets the following criteria: (1) Actual annexation to the realty; (2) Appropriation to the use or purpose to which the realty is put; (3) Intention of the annexor to make the article a permanent accession to the freehold."

Since annexation, appropriation to use and intention must all be considered, certain types of property that have a variety of functions such as boilers, furnaces and stand-by generators may be personal property in some instances and additions to realty in others. When such types of property are installed primarily to provide service to the building or structure, and are essential to the use of the structure, they are realty improvements. However, similar units, when installed in a plant to perform a processing function, may, as machinery, retain their status as personal property.

INSTALLING OR REPAIRING ELEVATORS

Under the General Sales Tax Law, effective September 1, 1969, the installation of an elevator, escalator or dumb-waiter is a realty improvement and the person installing such items into realty is deemed the consumer who is required to pay the 4% tax on all materials used in this activity. The charge for installing such items is not subject to the tax nor is the repair, service or maintenance of such items a taxable service.

UTILITY TRANSMISSION AND DISTRIBUTION LINES

The definition of "tangible personal property" in Section 77.51(5), Wisconsin Statutes, includes water, sewer, telephone and telegraph lines, electrical and gas transmission and distribution lines, and the poles, transformers, towers, pipes, conduit or other property by which they are supported or in which they are contained, if erected or installed under easement or license on **land owned by others**, (including authorizations under Section 86.16 and 182.017, Wisconsin Statutes). Underground utility lines are deemed personal property to the same extent overhead lines are personal property, provided the utility line is installed under easement or license on land owned by others.

The sale, lease or rental, and the repair, service, maintenance and installation of such personal property is subject to the 4% Wisconsin sales and use tax. Accordingly, the gross receipts received by a contractor from the construction and installation of a fabricated line, or a portion thereof, and the receipts received from a transfer "in place" of a transmission or distribution system are taxable.

Although a contractor performing a lump sum contract for the construction of a new utility line may have expenses such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing right-of-way, unloading and hauling materials, etc. these are costs of performing the job, and they do not affect the taxability of the gross receipts from the installation of a new utility line on land used under easement or license. However, if the contractor receives a separate contract for tree trimming and line clearing, that contract would not involve a taxable service.

The concrete foundations for utility towers are deemed to be part of the realty. Accordingly, the construction of such foundations is a construction activity and the contractor's purchases of materials used in the construction of such foundations are taxable, while that part of the contractor's gross receipts which are attributable to the construction of the foundations is not taxable. Installing crushed rock backfill and anchors are also deemed realty improvements. The contractor must make a reasonable approximation of the portion of his gross receipts derived from building concrete foundations, and installing crushed rock backfill and anchors.

Where substations are built on the utility's own land, the grading, graveling, fencing and foundations become part of the realty. Poles and lines on the company's property are also realty additions. The transformers, circuit breakers and other equipment installed at the substation to manipulate the flow of the electricity remain personal property after installation.

(Note: This is a portion of Technical Information Memorandum S-46.1. If you desire a copy of that memorandum, or have other related questions, please let us know.)

QUARTERLY TAX REPORT

This quarterly newsletter is the last one you will receive during 1972. Each year in December we encounter mailing weight problems when we attempt to send out the quarterly newsletter along with the current tax return and the annual information return. For this reason there will not be a December 1972 "Tax Report".

We suggest that you keep these quarterly "Tax Reports" for future reference purposes. We are finding that the answers to many current questions we are asked by retailers are often found in one of the prior issues of this publication. Therefore, your retention of these reports may save you time and expense in contacting this department, and, in turn, it will also contribute towards lower governmental administrative costs.